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Gadsden Tool, Inc. and Retail, Wholesale and Department Stores Union, AFL-CIO. Case 10-CA-30005-2

August 29, 2003

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND WALSH

On January 24, 2002, Administrative Law Judge Jane Vandeventer issued the attached supplemental decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief, and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

Introduction

The judge found, on a stipulated record, that the Respondent is required to remit retroactive dues to the Union. Contrary to our dissenting colleague, we find, in agreement with the judge, that the Union's failure to submit dues authorizations to the Respondent did not excuse the Respondent from its obligation to remit dues to the Union.¹

Relevant Facts

In the underlying decision in this case, the Board found that the Respondent violated Section 8(a)(5) of the Act by engaging in bad-faith bargaining for an initial contract and by failing to execute a collective-bargaining agreement to which the parties agreed on February 18, 1997. 327 NLRB 164 (1998), *enfd.* No. 98-7098 (8th Cir. 2000). In particular, the Board found that the Respondent made a comprehensive bargaining proposal which the Respondent expected the Union to reject. To the Respondent's surprise, the Union accepted the proposal. After the Union accepted, the Respondent's attorney told the Union's negotiator that "[y]ou realize that what you guys have done is shut this company down, because [the Respondent's President] Mr. Hill is not going to sign a contract."

In the compliance stage of this proceeding now before us, the parties stipulated to the following facts:

¹ For the reasons set forth in the judge's decision, we also find no merit to the other arguments raised by the Respondent in support of its contention that it is not obligated to remit retroactive dues to the Union.

The applicable collective-bargaining agreement (i.e., the one accepted by the Union but never signed by the Respondent) was effective February 18, 1997, through November 24, 1999. Article IV of that agreement provides in relevant part:

Section 2. The Company agrees upon individual written revocable authorization from members of the Union, initiation fees and dues for each month shall be deducted from each members first pay each month by the Company. These funds shall be forwarded to the secretary-treasurer of the Union each month.

Section 3. The Union shall indemnify, defend, and save the Company harmless against any and all claims, demands, suits or other forms of liability that shall arise out of reason of action taken by the Company in reliance upon payroll deduction authorization cards submitted by the Union to the Company.

Section 4. In the event any question arises as to the proper party to whom such dues shall be paid, it is agreed that the Company may continue to deduct dues and shall be entitled to hold them in escrow pending the resolution of such question.

Following the issuance of the Board's decision on November 30, 1998, the Union requested that the Respondent execute the collective-bargaining agreement. The Respondent did not respond to the request, and subsequently filed its petition for review with the 11th Circuit.

On December 1, 2000, after the entry of the 11th Circuit's judgment enforcing the Board's Order, the Union, for the first time, submitted signed dues-checkoff authorizations to the Respondent for the relevant periods of the contract.²

The parties' stipulation also establishes that the Union's representative, John Whitaker, would have testified that he did not submit the dues authorizations to the Respondent at an earlier date because he believed that any such submission would have been pointless and a waste of time. Whitaker would have further testified that he believed such submissions to be pointless because (a) the Respondent had refused to execute the contract and had maintained throughout the effective dates of the agreement that there was no agreement; (b) the Respondent's response to the December 14, 1998 request to execute the contract was to petition for review of the Board's Order; and (c) the Respondent's attorney had advised the Union that by accepting the Respondent's offer the Union was

² The instant case involves a failure to remit dues for periods prior to December 1, 2000.

“shut[ting] this company down because Mr. Hill is not going to sign a contract.”

The stipulation additionally establishes that the Respondent’s vice president, Jimmy Hill, would have testified that (a) had the Union provided the Respondent with the dues-checkoff authorizations during the term of the collective-bargaining agreement, he would have deducted dues from the employees’ wages and held the moneys in escrow pending final resolution of the Board proceedings;³ and (b) the Respondent complied with all terms and conditions contained in the disputed agreement during the term of that agreement.

We agree with the judge that the Respondent is required to remit the retroactive dues to the Union. Contrary to our dissenting colleague, we do not find that the Respondent’s obligation to remit dues retroactively is excused by the fact that the Union did not submit any dues authorizations to the Respondent until December 1, 2000. As the facts in the underlying decision and in the stipulated record show, throughout the effective period of the collective-bargaining agreement, the Respondent consistently maintained that there was no agreement in effect. In view of this conduct, the Union could reasonably believe that the Respondent had no intention of honoring the contractual requirement to deduct and remit the dues.

In *Williams Pipeline Co.*, 315 NLRB 630, 632 (1994), the Board held in similar circumstances that an employer was obligated to remit dues to a union even though the union did not present dues authorizations to the employer. In that case, the employer repudiated a collective-bargaining agreement, in violation of Section 8(a)(5). The Board held that it would have been futile in those circumstances for the union to present dues authorizations to the employer, and thus the failure to present the dues authorizations did not excuse the employer from its obligation to remit those dues to the union.

Williams Pipeline is directly applicable to the facts here. As in *Williams*, the Respondent’s unlawful conduct communicated in the clearest terms to the Union that the Respondent had no intention of entering into a contractual relationship with the Union. Because the obligation to deduct and remit dues is wholly dependent on the existence of such a contractual relationship, the Union could reasonably believe that until the Respondent signed the collective-bargaining agreement, any attempt to submit dues authorizations would be an act of futility. As the Board held in *Williams*, a union in these circumstances is not required to engage in wholly futile acts.

³ We do not adopt the judge’s finding that the “Respondent admits that it did not inform the Union of this proposal.” The stipulated record does not include evidence of such an admission by the Respondent.

Our dissenting colleague contends that the Respondent has no obligation to remit the retroactive dues payments to the Union. He argues that no such obligation exists because (a) the Board’s remedial order requires the Respondent to pay moneys to the employees, but not the Union; (b) the retroactive payments are prohibited by Section 302(c)(4) of the Act; (c) in view of the escrow provision in section 4 of article IV of the contract, it is not clear that it would have been futile for the Union to submit the dues-checkoff authorizations to the Respondent; and (d) there is no new complaint allegation that the Respondent failed to deduct the dues after the Union submitted the dues-checkoff authorizations on December 1, 2000. We disagree with these contentions.

At the outset, our colleague’s contentions would require a result contrary to the Board’s holding in *Williams Pipeline*.

Next, our colleague’s contention that the remedial order in the underlying case precludes retroactive payments to the Union is based on a misreading of that order. The order is in no way limited to paying moneys to the employees; it requires the Respondent to “give retroactive effect” to the terms and conditions contained in the collective-bargaining agreement, which provides that the Respondent was obligated to remit dues payments to the Union.

In addition, in relying on Section 302(c)(4) of the Act, our colleague ignores the circumstances, i.e., that the Respondent, having engaged in conduct violating Section 8(a)(5), is obligated by the Board’s Order to put the employees and the Union in the position they would have been but for the Respondent’s unlawful conduct. Clearly, the language of Section 302(c)(4), which generally requires the submission of a written authorization as a condition for deducting dues, does not address the circumstances created by the Respondent’s unlawful refusal to execute the agreement and the need to remedy that unlawful conduct.

We also disagree with our colleague’s contention that, in view of the escrow clause in section 4, it was not clear that it would have been futile to submit dues authorizations to the Respondent during the relevant period. By its terms, section 4 references a dispute “as to the proper party to whom such dues shall be paid.” Here, the dispute was not over the party to whom dues should be paid; it involved whether there was any obligation to deduct dues at all. Thus, the existence of that provision did not increase the likelihood that the Respondent would escrow the dues in these circumstances.

Further, our colleague’s point ignores the fact that, by its very words, section 4 is premised on the Respondent’s acknowledgment of a contractual relationship with the

Union. Clearly, by its unlawful conduct, the Respondent communicated that it had no intention of acknowledging the existence of a contractual relationship with the Union. Thus, the Respondent provided the Union with no basis upon which to reasonably believe that the Respondent would deduct and escrow the dues pursuant to the parties' contract.⁴ Moreover, requiring the Union to rely on section 4 in these circumstances would be contrary to the requirement in compliance cases that any uncertainty must be resolved against the party whose unlawful conduct created the uncertainty. See, e.g., *La Favorita, Inc.*, 313 NLRB 902, 903 (1994), *enfd.* 48 F.3d 1232 (10th Cir. 1995).

Finally, we find no merit to our colleague's contention that the retroactive dues payments are precluded by the absence of a new complaint allegation over the Respondent's failure to deduct any dues upon receipt of the dues-checkoff authorizations on December 1, 2000. The issue before us concerns the remedy for the Respondent's failure to sign the collective-bargaining agreement on February 18, 1997. As shown above, the remedy for that conduct includes the requirement that the Respondent retroactively remit dues for the relevant periods of the contract. The absence of a new complaint allegation over conduct occurring subsequent to December 1, 2000, has no bearing on this remedial issue.

In sum, we find that, by its conduct, the Respondent clearly communicated to the Union that the submission of dues authorizations during the effective period of the contract would have been an act of futility. In view of this conduct, the Respondent's obligation to remit dues to the Union was not excused by the Union's failure to submit the dues authorizations. Accordingly, we adopt the judge's finding that the Respondent is obligated to pay the retroactive dues to the Union.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Gadsden Tool, Inc., Gadsden, Alabama, its officers, agents, successors, and assigns, shall pay retroactive dues in the amount of \$14,905, with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), to the Union.

⁴ To that end, we find no significance to the fact that the parties have stipulated that the Respondent's vice president, Jimmy Hill, would have testified that he would have deducted the dues and held them in escrow had the Union submitted the dues authorizations during the relevant period. This testimony has no bearing on the fact that during the relevant period, the Respondent's unlawful conduct clearly communicated to the Union that any submission of dues authorizations would be an act of futility.

Dated, Washington, D.C. August 29, 2003

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

CHAIRMAN BATTISTA, dissenting.

Contrary to my colleagues, I would reverse the judge's finding that the Respondent is obligated to remit retroactive dues payments to the Union.

The facts are not in dispute. The Respondent violated Section 8(a)(5) of the Act, *inter alia*, by failing to execute a collective-bargaining agreement upon which the parties reached agreement on February 18, 1997.¹ The Board's Order required the Respondent to execute, and give retroactive effect to, that agreement.

Article IV of that agreement provides as follows:

Section 2. The Company agrees upon individual written revocable authorization from members of the Union, initiation fees and dues for each month shall be deducted from each members first pay each month by the Company. These funds shall be forwarded to the secretary-treasurer of the Union each month.

Section 3. The Union shall indemnify, defend, and save the Company harmless against any and all claims, demands, suits or other forms of liability that shall arise out of reason of action taken by the Company in reliance upon payroll deduction authorization cards submitted by the Union to the Company.

Section 4. In the event any question arises as to the proper party to whom such dues shall be paid, it is agreed that the Company may continue to deduct dues and shall be entitled to hold them in escrow pending the resolution of such question.

Although section 2 of the above article makes clear that the submission of dues-checkoff authorizations is a prerequisite to the obligation to deduct and remit dues, the Union did not submit any dues-checkoff authorization cards to the Respondent until December 1, 2000, after the Board's Order was enforced (and after the expiration date of the contract). The Union claims that it was pointless to submit the dues-checkoff authorizations prior to this time in view of the Respondent's refusal to ex-

¹ 327 NLRB 164 (1998).

cute the agreed-upon contract. The Union also relies on the statement of the Respondent's attorney that the Union's acceptance of the Respondent's bargaining proposal was tantamount to shutting down the company, and that the Respondent's president was not going to sign the contract.

Significantly, the stipulated record also establishes that, had the Union actually presented the Respondent with signed checkoff authorization cards during the relevant period, the Respondent would have deducted the dues and placed them in escrow pending resolution of the underlying litigation. The parties have stipulated that the Respondent's vice president would have testified to that effect, and that his testimony would have been uncontradicted.

The judge found, and my colleagues agree, that although the Union did not present the Respondent with dues authorization cards during the relevant period, the Respondent is nevertheless obligated to retroactively remit dues to the Union for this period. I disagree.

At the outset, I note that although the Board's remedial order requires the Respondent to pay certain moneys *to the employees*, it does not require the Respondent to pay any moneys *to the Union*. In these circumstances, it is wholly improper to require the Respondent, in a compliance proceeding, to comply with an order that does not exist.²

Concededly, the Board order *does* require that the Respondent comply with the contract. However, the contract itself (art. IV, sec. 2) makes clear that the Respondent's duty to deduct dues from employees' pay and to remit these funds to the Union is contingent on the Union's furnishing signed checkoff authorizations to the Respondent. It is not disputed that, during the relevant period, the Union failed to furnish any authorizations to the Respondent.

My colleagues argue that it would have been futile for the Union to present the Respondent with checkoff authorizations because the Union reasonably believed that the Respondent would not have honored them. My colleagues rely, inter alia, on statements by the Respondent's attorney that the Respondent would not sign a contract. However, even if the Union held that belief, the remedy cannot include retroactive deduction of dues. It is clear that an employer cannot deduct dues, absent receipt of an express authorization from the employees.³ There was no such receipt prior to December 1, 2000. Thus, it would have been improper, and indeed unlawful,

for the Respondent to deduct dues from the employees prior to December 1, 2000.

Further, it is not at all clear that it would have been futile for the Union to secure signed authorizations from the employees and submit same to the Respondent. In that situation, the Respondent would have authorizations and would therefore be authorized to deduct the dues. The only question for Respondent in that circumstance would be whether to send the deducted dues to the Union or to return the money to the employees. Because the existence of the contract was still in issue, there was no definitive answer to the dilemma. However, section 4 of the contract provided a way out of the dilemma. The provision requires that the money be placed in escrow. In that way, if the Union and the Board won the underlying litigation (which they ultimately did), the money would go to the Union. If they lost, the money would be returned to the employees. The Union should have followed this sensible approach. It did not do so.

Finally, with respect to the period after December 1, 2000, the Respondent could have deducted dues at that time for all periods covered by the checkoff authorizations. However, the prior case did not allege that the Respondent's failure to do so was unlawful. Indeed, that case was litigated and decided before December 1, 2000. Nor has there been a new allegation that such failure to deduct after December 1, 2000, was unlawful. Rather, the General Counsel and the Union now seek the dues under the guise of securing compliance with the Board order in the underlying case. As discussed above, the Board order does not so require.

Dated, Washington, D.C. August 29, 2003

Robert J. Battista,

Chairman

NATIONAL LABOR RELATIONS BOARD

John D. Doyle Jr., Esq., for the General Counsel.

R. Kent Henslee and *Ralph K. Strawn Jr., Esqs.*, for the Respondent.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

JANE VANDEVENTER, Administrative Law Judge. This is a supplemental proceeding for the purpose of determining an aspect of the remedy due under the Board's decision and order in this matter, reported at 327 NLRB 164 (1998), enforced in an unpublished opinion, No. 98-7038 (8th Cir. 2000). The parties have agreed to a stipulated record of facts, waived their right to a compliance hearing, and moved for a decision based on the stipulated record. The motion for a decision based on the stipulated record was granted by the associate chief administrative

² Compare *Williams Pipeline*, 315 NLRB 630, where the Board's order expressly required payments to the union.

³ See Sec. 302(c)(4) of the Act.

law judge and the case was assigned to me for decision. Both the General Counsel and Respondent have filed briefs, which I have read.¹

Based on the entire record, I make the following

FINDINGS OF FACT

I. THE FACTS

A. The Board's Decision

In its decision cited above, the Board found, among other things, that Respondent unlawfully refused to execute an agreed-upon collective-bargaining agreement which was reached on February 18, 1997. The Board ordered Respondent to execute the collective-bargaining agreement, to give retroactive effect to the terms of the agreement retroactive to February 18, 1997, and to make employees whole for the refusal to execute and abide by the agreement. The parties have stipulated that no employee suffered losses of wages or other compensation because of the unfair labor practices found by the Board. However, the parties disagree as to the effect of the Board's Order on the enforcement of one portion of the collective-bargaining agreement (Agreement), i.e., the remission of employee dues to the Charging Party Union, the Retail, Wholesale and Department Stores Union, AFL-CIO (the Union or the Charging Party). The General Counsel and the Union seek retroactive dues remissions pursuant to dues-checkoff authorizations executed by employees. Respondent disputes these payments. This is the only monetary remedy, which is being sought based on the Board's Order in this case.

B. Article IV of the Collective-Bargaining Agreement

The sole issue in this matter, therefore, is the interpretation of the Board's remedial Order as it bears on the Agreement's article concerning the collection of union dues by Respondent and the remission of those dues moneys to the Union.

Sections 2, 3, and 4 of article IV (union security) of the collective-bargaining agreement provide:

Section 2. The Company agrees upon individual written revocable authorization from members of the Union, initiation fees and dues for each month shall be deducted from each members first pay each month by the Company. These funds shall be forwarded to the secretary-treasurer of the Union each month.

Section 3. The Union shall indemnify, defend and save the Company harmless against any and all claims, demands, suits or other forms of liability that shall arise out of reason of action taken by the Company in reliance upon payroll deduction authorization cards submitted by the Union to the Company.

Section 4. In the event any question arises as to the proper party to whom such dues deduction shall be paid, it is agreed that the Company may continue to deduct dues and shall be

entitled to hold them in escrow pending the resolution of such question.

The collective-bargaining agreement was effective by its terms from February 18, 1997, through November 24, 1999.

C. Dues Authorization Cards

It is undisputed that Respondent did not consider itself bound by the collective-bargaining agreement at any time during its effective period, and in fact, continued to litigate its duty to comply with the collective-bargaining agreement throughout that period. During the effective period of the agreement, the Union did not forward to Respondent any of the dues authorization cards, which had been executed by employees. The Union takes the position that it would have been futile for it to forward the dues authorization cards, as Respondent was not complying with any portion of the agreement. The parties stipulated that, at any compliance hearing, the Union's representative, John Whitaker, would testify that his reasons for believing that submitting the dues authorizations would be futile were Respondent's refusal to execute the agreement, its continued contention that there was no agreement, Respondent's failure to respond to the Union's request on December 14, 1998 (after the Board's decision in this matter), that it execute the collective-bargaining agreement, Respondent's subsequent petition for review of the Board's Order, and a statement made to him by a representative of Respondent that Respondent was "not going to sign a contract." The latter statement was part of the findings of fact in the underlying Board decision.

The parties stipulated that the Union provided Respondent with the names of the employees who had signed dues authorization cards on or about December 1, 2000, after the entry of the judgment of the court of appeals enforcing the Board's Order. The parties further stipulated that Respondent has not remitted any dues to the Union.

Finally, the parties stipulated that the amount of dues calculated by the Regional Director and set forth in the compliance stipulation is an accurate representation of the amount of dues which would be owed by Respondent to the Union, should it be found that such payment is required under the Board's Order. That amount, not including interest, is \$14,905.

D. Contentions of the Parties

Respondent argues that it should not be obliged to remit dues to the Union under the collective-bargaining agreement because the Union did not timely submit dues authorizations to it during the life of the agreement, but delayed until compliance with the Board's Order, as enforced by the court of appeals, was being sought. Respondent argues that it had no legal obligation to pay the dues until it was presented with dues authorizations, but by the time that occurred, the Union was time-barred by Section 10(b) of the Act from seeking the payment of the dues.

Respondent asserts that, had the Union provided the dues authorizations during the life of the agreement (and the pendency of the litigation about whether there was a collective-bargaining agreement), Respondent would have deducted dues and held them in escrow, but admits that it did not inform the Union of this proposal.

¹ Subsequent to the filing of briefs, Respondent filed a motion seeking to strike portions of the General Counsel's brief. The language objected to was in the nature of argument, and I therefore deny Respondent's motion.

Lastly, Respondent argues that the Union is barred from collecting dues from Respondent because it did not timely file a grievance under the collective-bargaining agreement, which was in litigation.

The General Counsel and the Union argue that the Board's Order, by requiring Respondent to execute and give retroactive effect to the collective-bargaining agreement, implicitly requires Respondent to comply, *in the compliance stage of the proceeding*, with the portion of the agreement dealing with dues remissions to the Union. They argue that, given Respondent's maintenance throughout the life of the agreement of its position that there was no collective-bargaining agreement, the Union had no obligation to engage in a futile act, i.e., providing due authorizations to an employer who had repudiated all its obligations under the agreement, including the obligations in article IV.

The General Counsel argues that the Board's decision in *Williams Pipeline Co.*, 315 NLRB 630, 632 (1994), supports its contention, and further, that to hold otherwise would unfairly resolve doubts in a compliance proceeding against the wronged party, rather than against the wrongdoer. If there are any uncertainties about what would have happened absent any unfair labor practices, the General Counsel contends that they should be resolved against Respondent, whose unlawful conduct created the uncertainty.

The General Counsel argues that Respondent's contention that the particular remedy in issue is barred by Section 10(b) is an attempt to relitigate an issue which was decided in the underlying case. The General Counsel also argues that no new unfair labor practices are involved herein, rather that the payment of the dues moneys is an aspect of the remedy for the unfair labor practices, which were found by the Board and enforced by the Court of Appeals.

II. DISCUSSION AND ANALYSIS

A. The Board's Order

The Board's Order in this case required that Respondent execute the collective-bargaining agreement and give retroactive effect to its provisions. While many Board Orders in similar situations include specific language ordering a respondent to remit dues under a collective-bargaining agreement to the union involved,² this order does not include such specific language. Respondent did not explicitly base its 10(b) defense on this fact, but its defense impliedly attacks that absence of specific language in the Board's Order.

It is well settled that the Board has "full authority over the remedial aspect of its decisions, even in the absence of exceptions." *Raven Government Services*, 336 NLRB 991 (2001). Furthermore, it is a matter of elementary logic to conclude that where the Board orders retroactive compliance with a collective-bargaining agreement, its order encompasses the *entire* collective-bargaining agreement, not discrete portions of it. In the instant case, the Board ordered Respondent to comply with all the provisions of the expired collective-bargaining agree-

ment; the Board nowhere excepted article IV from its remedial order. I therefore find specifically that the Board's order that Respondent comply retroactively with the expired collective-bargaining agreement includes compliance with article IV.

This holding effectively disposes of Respondent's contention that the remedy is barred by Section 10(b) of the Act. The dues remission is a part of the remedy for the original unfair labor practices found by the Board, not a new unfair labor practice. The original charge was timely filed, as found by the Administrative Law Judge and the Board in the underlying case. To the extent Respondent argues general unfairness of the Board's remedy because Respondent is unable to deduct the dues from the employees' wages, and will be obliged to pay the dues itself, I find that this is not a ground for excusing its compliance with the Board's order. Respondent itself incurred the risk that this situation might occur. *Shen-Mar Food Products*, 221 NLRB 1329 (1976), *enfd.* 557 F.2d 396 (4th Cir. 1977).

B. Respondent's Contract-Based Contentions

Respondent contends that it be permanently excused from complying with article IV of the collective-bargaining agreement, the only monetary remedy involved in this matter, because the Union did not timely submit dues authorization cards which had been executed by employees during the life of the collective-bargaining agreement. While this contention underlies its 10(b) argument, it also appears to sound in contract law. It appears that Respondent would urge that its obligation under article IV should be excused because of the Union's failure timely to fulfill the condition that it tender dues authorization cards. During the entire life of the collective-bargaining agreement, however, Respondent maintained a legal position in litigation before the Board and the court of appeals to the effect that there was no agreement in effect. While Respondent was not obeying *any* of the terms of the agreement, it makes the inconsistent claim that the Union was not carrying out a single term of the agreement. Respondent would argue that at the same time it flagrantly flouted the agreement, and was therefore in complete breach of the agreement, the Union was obliged to observe a legal fiction and to pretend that the contract was being observed by both parties. Respondent cannot escape the remedy for its unlawful actions by seeking the protection of the very contract it had refused to execute and to acknowledge the existence of. Not surprisingly, Respondent can summon no relevant legal precedent to support its inconsistent and circular argument.

I find that the Union's presentation of the dues authorization cards in December 2000, at the compliance stage of this proceeding, was sufficient to support its recovery of the contractual make-whole remedy ordered by the Board. Additionally, as the General Counsel points out, the Board has specifically held that where an employer is refusing to abide by a collective-bargaining agreement, the Union is not expected to continue fruitless efforts on its side to submit dues authorization cards to the noncomplying employer. *Williams Pipeline Co.*, *supra*.

Respondent also argues that it should be excused from complying with the Board's make-whole remedy because the Union did not exhaust its contractual remedies by filing a grievance

² See, e.g., *Sommerville Construction Co.*, 327 NLRB 514 (1999); *W. J. Holloway & Son*, 307 NLRB 487 (1992); and *Seneca Environmental Products*, 243 NLRB 624 fn. 2 (1979).

under the collective-bargaining agreement. For the same reasons outlined in the preceding paragraph, Respondent's argument is inconsistent and self-serving. I reject it.

Finally, Respondent's arguments rely on imposing duties on the Union, making assumptions against the Union, and resolving all doubts against the Union. This stands Board law on its head and is in complete opposition to Board law and policy in remedial issues. In compliance matters, the Board has long held that where uncertainties exist, they should be resolved against the wrongdoer, whose conduct created the uncertainties. See, e.g., *Williams Pipeline*, supra, 315 at 632; *Abilities &*

Goodwill, Inc., 241 NLRB 27 (1979); *Ogle Protective Service, Inc.*, 183 NLRB 682, 686 (1970).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

ORDER

The Respondent, Gadsden Tool, Inc., Gadsden, Alabama, its officers, agents, successors, and assigns, shall pay retroactive dues in the amount of \$14,905, with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), to the Union.

Dated at Washington, D.C. January 24, 2002